

## CHAPTER 17 - Civil Rights

### OVERVIEW

Civil rights groups have often been successful by persuading a majority of voters that they deserve equal treatment. Usually, the Supreme Court has followed the mood of the country in such matters. The Court ruled against the Civil Rights bill that followed the Civil War and established the doctrine of “separate but equal” in the latter part of the nineteenth century. Minorities achieved a big victory with passage of the 1964 and 1965 civil rights legislation. When Northerners became upset with racial demands, the Court struck down de jure discrimination but upheld de facto discrimination.

The modern women’s rights movement grew out of the civil rights movement. Although the Equal Rights Amendment was not ratified, the Supreme Court has struck down many instances of gender discrimination. The civil rights movement also spawned new attention to the rights of the disabled. Once again, the most important steps were taken by Congress, not by the courts.

### OUTLINE

#### I. Origins of Civil Rights

- The term “civil rights” refers to the right to equal treatment under the law. The pertinent passage of the Constitution is the equal protection clause of the Fourteenth Amendment. Although minorities rely on this clause, politicians listen to what majorities say the clause means since voters elect them. Minorities often react by turning to the courts. Yet, like politicians, judges are sensitive to majorities, too.

##### A. Conflict over Civil Rights after the Civil War

- At the end of the Civil War, some southern states passed black codes, laws that applied to newly-freed slaves but not to whites. During Reconstruction, Congress passed the Civil Rights Act of 1866 to guarantee every citizen regardless of race or color the same right to the full and equal benefit of all laws. In addition, Congress established a Freedman’s Bureau, which provided blacks with education and other benefits.
- As the years passed, there were charges of fraud, corruption, and mismanagement leveled against both black elected officials and carpetbaggers. The Republicans won the presidency in 1876, but only after promising Democrats they would remove the Union army from the South. This brought the end to Reconstruction, and the whites reinstated many of the old racial patterns.
- The Ku Klux Klan used intimidation to keep blacks from voting. In addition, laws were passed making it difficult for blacks to vote: poll taxes, grandfather clauses, and the white primary. African Americans were also subject to Jim Crow laws, state laws that segregated the races from each other.

##### B. Early Court Interpretations of Civil Rights

- With little public support for civil rights, the Supreme Court of the day took a very restrictive view of the equal protection clause. Relying on the state action doctrine, the Court declared the Civil Rights Act of 1876

unconstitutional. In the landmark case of *Plessy v. Ferguson* (1896) it developed the separate but equal doctrine.

### **C. Blacks Get Electoral Power**

- Progress in the dismantling of segregation took place when blacks left the South for the North where they could vote. Northern political machine politicians were willing to allow blacks to vote. By the 1930s, African Americans used their votes to win a small place in the politics of a few big cities. The biggest breakthrough came when many gave them credit for casting the decisive votes electing Harry Truman as president.

### **D. Awakening the Supreme Court to Civil Rights**

- The NAACP relied on the courts to achieve racial equality. After initial failures, the NAACP won cases declaring the white primary unconstitutional and getting restrictive housing covenants declared unenforceable.

## **II. Redefining the Equal Protection Clause**

- Civil rights groups tried for years to get the *Plessy* decision overturned. Early successes came in the area of higher education. Finally, the landmark *Brown* decision was handed down in 1954, overturning *Plessy*.
- The Court reasoned that racially segregated public schools were inherently unequal by creating an inferiority complex in the minds of students and thus in violation of the fourteenth Amendment's equal protection clause.
- The Court ordered schools to desegregate "with all deliberate speed," which southern school boards used to resist the decision.
- Later, the Court declared race was a suspect classification that would be closely scrutinized by the courts to make sure it did not violate equal rights.

### **A. Brown v. Board of Education of Topeka, Kansas (1954)**

- *"We conclude that the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."* —Chief Justice Earl Warren

### **B. Civil Rights after Brown**

- Three civil rights organizations came into being immediately after *Brown*: the Congress of Racial Equality (CORE), the Student Nonviolent Coordinating Committee (SNCC), and the Southern Christian Leadership Conference (SCLC).
- One year after *Brown*, a more militant phase of the civil rights movement erupted, involving acts of civil disobedience. Using boycotts, protests, and acts of civil disobedience, the southern civil rights movement gained strength by winning sympathetic coverage in the northern press.
- Southern government officials opposed the civil rights movement. Most southern members of Congress signed the Southern Manifesto. When school began in the fall of 1964, 10 years after *Brown*, only 2.3 percent of black students in the states of the Old Confederacy attended integrated schools.

- Through the vote, progress was gradually made. Presidential candidates, including John Kennedy, paid more attention to civil rights issues. Then in 1963, Martin Luther King gave his “I have a Dream” speech to 100,000 black and white demonstrators on the Washington, D.C. mall. Kennedy’s assassination just a few months later generated an outpouring of moral commitment to racial justice unseen since the closing years of the Civil War.
- In response, Congress passed the 1964 Civil Rights Act, prohibiting racial discrimination in all places of public accommodations. The percentage of black students in southern schools that included whites increased dramatically from 2.3 percent in 1964 to 91.3 percent in 1972. In 1967, Congress passed a Voting Rights Act.

### **C. Decline in Strength of Civil Rights Movement**

- When Martin Luther King, Jr. began attacking racial discrimination in the North, support for civil rights protests among many northern whites dwindled. Civil violence began to break out in black neighborhoods, beginning in Los Angeles in 1964 and spreading to other cities over the next three years. King’s assassination in 1968 resulted in more violent racial disturbances.
- Whites had second thoughts about the movement after this and began opposing such things as busing, affirmative action, and other programs of racial integration. Blacks began identifying more with the Democratic Party, and the backlash from whites helped the Republican Party win five of the eight presidential elections following the 1964 Civil Rights Act.

### **D. The Supreme Court No Longer Forges Ahead**

- When some turned to the Supreme Court to further the cause of racial integration, they were disappointed. Instead, the Court ruled that the Constitution forbade de jure segregation (segregation imposed by law) but not de facto segregation (*Milliken v. Bradley*, 1974).
- Following this decision, very little additional school desegregation took place in either the North or South.

### **E. Affirmative Action**

- Some civil rights groups asked the government and private institutions to develop affirmative action plans. These plans range from helping minorities learn about job opportunities to quotas.
- In a 1978 case a white male, Allan Bakke, challenged the affirmative action program at University of California at Davis. He alleged reverse discrimination. The Supreme Court struck down the University’s quotas but did say that race could be used as one of many factors when admitting people.
- During the 1990s, all forms of affirmative action came under increasing criticism. California passed an initiative banning affirmative action (as did Washington) and a federal court ordered Texas to eliminate race-based preferences from its state university admissions system. The growing ambivalence toward affirmative action could be seen in the positions taken

by George W. Bush and Al Gore. Bush opposed it and Gore, though supporting it, opposed the use of quotas.

#### **F. Elections, Courts, and Civil Rights: An Appraisal**

- In spite of the electoral and educational gains of blacks in recent decades, the process of racial change has slowed in recent years. Poverty among blacks has hardly changed since 1970. Some say this is due to continuing racism. Others insist that welfare has given people an incentive not to work.

### **III. Civil Rights of Other Minorities**

- The civil rights of groups other than African Americans have become legally and politically distinctive under two circumstances: (1) when groups eligible for affirmative action need to be defined, and (2) when language or other issues arise.

#### **A. Latinos**

- Currently, Latinos constitute nine percent of the population of the United States only three percentage points behind African Americans. Yet they have not been as politically effective. Many more of them lack citizenship, and fewer of them vote. Also, they come from different countries, preventing them from being united with a common background.
- Various groups represent Latinos. One group, the Mexican American Legal Defense and Education Fund (MALDEF), focuses on voting, education, and immigration issues. Partly due to this group's efforts, schools must provide special educational programs for those not proficient in English, and ballots, in some instances, must be printed in languages other than English.
- An example of Latinos influencing politics was the victories of several Democrats following Republican support and the passage of Proposition 187 in California in 1994.
- The case of Elian Gonzalez revealed the extent to which an ethnic group can mobilize itself for political action and the clear limits to what such a group can achieve once a majority of Americans take another point of view.

#### **B. Asian Americans**

- Asian Americans constitute about two percent of the population. They have not emphasized a political agenda. They are internally divided among many different nationalities. Unlike other ethnic minorities, they are not supportive of affirmative action and they tend to vote Republican.

#### **C. Gays and Lesbians**

- Some of the most contentious political debates in the late 1990s concerned the rights of gays and lesbians; not accidentally, this was a time when homosexuals were more engaged in electoral politics than ever before.
- In the last decade, the American public grew to believe that equal job opportunities ought to be accorded gays. Other gay issues such as gay marriages have not fared as well with the public. In September of 2004, an appeal was filed in a challenge to Louisiana's scheduled vote on a constitutional amendment banning same-sex marriages in the state. A New Orleans judge dismissed the suit, stating that it should have been filed in Baton Rouge.

#### **D. Native Americans**

- At the time of the writing of the Constitution, Native Americans were considered to be members of a foreign nation. The Supreme Court still considers the treaties Native Americans entered into with the American government binding. As such, they have certain rights and privileges not available to other groups.
- Recently, the Court has ruled that they have a right to provide commercial gambling on tribal property, even when it is otherwise forbidden by state law.
- In 1978, Congress passed the American Indian Religious Freedom Resolution, which has been interpreted to mean Native Americans have religious freedoms comparable to other citizens.

#### **IV. Women's Rights**

- The equal protection clause of the Fourteenth Amendment has been interpreted as pertaining to the legal treatment between men and women.
- The first struggle for women's rights focused on the right to vote. Since the 1960s, women's groups have achieved four civil rights objectives. The accomplishment of each (discussed below) required both electoral involvement and courtroom presentations.

##### **A. The Right to Equality Before the Law**

- Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of sex as well as race, religion, or national origin.
- In 1972, Congress proposed the Equal Rights Amendment. The Amendment was ratified by 35 states, but this was three short of the number needed to become a part of the Constitution.
- In the 25 years after the ERA campaign began in earnest, women's place in politics changed more dramatically than in any previous quarter century.

##### **B. Initial Court Response to Women's Rights**

- For the first time the Supreme Court struck down a law treating men and women differently in 1971. It has subsequently declared many other such laws unconstitutional; yet, it has not treated sex as a suspect classification. It has upheld gender distinctions within the military.
- In order for a law treating men and women differently to be upheld, the Court must be convinced the law furthers important governmental objectives.

##### **C. Discrimination in the Workplace**

- The Supreme Court has ruled that business necessity may permit an employer to hire a person of particular gender. It also ruled in *Wards Cove vs. Antonio*, 1989 that federal law required those bringing discrimination suits to bear the burden of proof; Congress overruled this interpretation of Title VII of the 1964 Civil Rights Act.

#### **D. Sexual Harassment**

- The Supreme Court first ruled on the meaning of sexual harassment in the workplace in 1986 (*Meritor Saving Bank v. Vinson*). The Court ruled that sexual harassment had to be experienced as personally devastating before it constituted a violation of the Smith Amendment.
- Following the Clarence Thomas appointment and significant political gains in 1992, the Court expanded the meaning of sexual harassment.

#### **E. Single-Sex Schools and Colleges**

- Single-sex education has long been a significant part of American education. Although many former single-sex universities now admit equal numbers of males and females, single-sex education survives at many private women's colleges.
- Despite the claims of some that single-sex educational institutions can be beneficial, many feel that education that is separated by gender cannot be equal.
- In 1996, the Supreme Court ruled that women must be admitted to the Virginia Military Institute.

#### **F. The Future of Women's Rights**

- Despite many gains, women have yet to break through what is known as the *glass ceiling*, the invisible barrier that has limited their opportunities for advancement to the highest ranks of politics, business, and the professions.

#### **V. Americans with Disabilities**

- Disabled people are about nine percent of the working-age population. They have one political advantage that both women and minorities lack: Every person runs the risk of someday becoming disabled. The rights of disabled people thus have broad appeal yet this advantage is offset by a number of political limitations.
- At the prodding of E.L. Bartless, Congress enacted in 1968 a law requiring that all future public buildings built with federal monies provide access for the disabled. Subsequently, the courts became more sensitive to the concerns of the disabled. In 1976, Congress passed a law guaranteeing all handicapped children the right to an appropriate education.
- Then the 1991 Americans with Disabilities Act made it illegal to deny employment to individuals on the grounds that they are handicapped.
- The courts have shown considerable reluctance to interpret the rights of the disabled in sweeping terms.
- There has been somewhat of a backlash toward laws designed to assist the disabled. It remains to be seen if such complaints will result in a weakening of the protection of the rights of the disabled.
- Despite the enactment of the Americans with Disabilities Act 13 years ago, in May 2004, the Justices Scalia-Thomas majority would make it far more difficult for people with disabilities to prove and remedy discrimination, even beyond the limits already imposed by a narrow 5-4 Court majority on the ADA in the name of "federalism" in *Board of Trustees of Univ. of Alabama v. Garrett* (2001). Scalia and Thomas joined Chief Justice Rehnquist's partial dissent from an important 1998

decision in which the Court majority ruled that the Americans with Disabilities Act (ADA) prevents discrimination against asymptomatic persons infected with the AIDS virus. (*Bragdon v. Abbott*)

- Two more votes on the Scalia-Thomas-Rehnquist side would wipe out this critical protection. Thomas and Scalia, joined again by Chief Justice Rehnquist, also dissented from the 1999 Court opinion finding that it was a violation of the ADA to require the improper institutionalization of two women with mental disabilities (*Olmstead v. L.C.*).
- The three argue that, despite clear congressionally enacted findings to the contrary, keeping people with disabilities in an institutionalized setting does not constitute discrimination, even where institutionalization is unjustified and unnecessary.